

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEB 19 1997

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In the Matter of:

Amendment of Section 73.202(b).
Table of Allotments
FM Broadcast Stations
(Two Rivers, Wisconsin and "Counter-Proposed" Mishicot & Denmark, Wisconsin)

RM-8987
MM Docket No. 97-52

John A. Karousos
Chief, Allocations Bureau
Policy and Rules Division
Mass Media Bureau

To the Commission:

**COMMENTS AND COUNTER-PROPOSAL TO ASSIGN A NEW FM STATION AT
TWO RIVERS, WISCONSIN**

Comes now, WTRW Incorporated, (hereinafter "WTRW") licensee of WTRW-AM, Two Rivers, Wisconsin, by its' President Mark Heller, with comments to the petition for rulemaking to assign a new FM channel at Two Rivers, WI, as that city's fourth aural service and WTRW's Counter-Proposal to assign same to Mishicot, Wisconsin, and proposal to change the "City of License" of Radio Station WGBM-FM (hereinafter "WGBM") Mishicot, Wisconsin to Denmark, Wisconsin, a larger community than Mishicot, which is located closer and midway between the WGBM transmitter site and WGBM studio site. WTRW is responding in a timely manner, as detailed in FCC Report Notice of Proposed Rule Making, released February 7, 1997.

Mishicot, Wisconsin is an incorporated village, with 1,296 inhabitants. Mishicot has it's own Zip Code and Post Office, but relies upon the cities of Manitowoc and Two Rivers for hospital care and library service. It's major employer is a tourist resort.

-2- Reply Comments and Counter-Proposal, Two Rivers, WI

Moreover, the five radio stations licensed to Two Rivers, and Manitowoc cover Mishicot with a 100% "city-grade" signal contour. The residents of Mishicot are served by these stations with news and information. (WCUB-AM, Two Rivers, WI; WOMT-AM, Manitowoc, WI; WLTU-FM, Manitowoc, WI; WQTC-FM, Manitowoc, WI; and WTRW-AM Two Rivers, WI).

Denmark, Wisconsin, the additional counter-proposed community, is also an incorporated village, has it's own Zip Code and Post Office and is a vibrant community with 1,612 inhabitants. It is located in Brown County, and it's major employer is a cheese factory. It currently has no local AM or FM radio service allocated to its' village.

Whereas, Section 307(b) of the Commission's Rules directs that "(e)very community of 'appreciable size' ... is presumed by the Commission to need at least one radio station for local self-expression." Ruarch Associates, 56 RR 2d 1593, para 2 (Rev. Bd. 1984) aff'd, 101 FCC 2d 1358 (1985) (emphasis added). Where a "transmission service disparity already exists, a different presumption applies, namely that the community which has no transmission service has a greater need than the community that already has one (or more)." Id. @ para 5. (emphasis added). However, these are rebuttable presumptions, and the Commission has refused to give very small communities a dispositive Section 307(b) presumption in a multiple party proceeding. Reeder v. FCC, 865 F.2d 1298 (D.C. Cir. 1989).⁴

In Ruarch, the Review Board found that Edinburgh, Virginia, with no licensed

⁴ Cf. FM Channel Assignments, 51 RR 2d 25, 29 (1983) (favoring a second assignment to a larger community over a first assignment to a very small community is consistent with the Commission's mandate to assign frequencies in a fair and efficient manner.

transmission service, was not entitled to a dispositive Section 307(b) preference over the competing community of Woodstock, Virginia, notwithstanding the fact that Woodstock possessed a full-time AM facility already. A critical factor in reaching this decision was that the Commission has “not been directed to a single case in which a community with a population of less than 1,000 has received a dispositive Section 307(b) preference.” Id. @ para 6.

In Santee Cooper Broadcasting of Hilton Head, Inc., 99 FCC 2d 781, (Rev. Bd. 1984), *aff’d sub nom* Women’s Broadcasting Coalition, 59 RR 2d 730 (1986), the Commission relied heavily on Ruarch when it ruled that Bluffton, South Carolina, a community with no local broadcast service, was not entitled to a Section 307(b) preference over Hilton Head, South Carolina, a town with a commonly licensed AM/FM combination. Hilton Head was a community with 11,000+ inhabitants, 950 businesses employing 12,000 workers, that was the business, commercial and tourism center of the surrounding area, including Bluffton. Bluffton was an incorporated community less than one square mile in size, with 235 housing units, no tourist accommodations, one restaurant, 20 commercial establishments employing 68 to 86 people, most of whom were not Bluffton residents. Id. @ para 7.⁵

In New York University, 19 FCC 2d 358 (Rev. Bd. 1969), the Commission determined that the local origination aspects of Section 307(b) were of no great significance in considering non-commercial FM applications, and the Section 307(b) issue was only one consideration along with other comparative considerations which

⁵ See also, New South Broadcasting Corp., 897 F.2d 867 (D.C. Cir. 1989) (Community without an existing local broadcast facility, not entitled to a preference over a large community served by two co-owned stations because the proposed community has a relatively small population, ill-defined boundaries and little need for a first local broadcast service).

-4- Reply Comments and Counter-Proposal, Two Rivers, WI

would go into the decision. Since it is unclear whether "First Congregational Services" the original petitioner in the request, could represent a religious or non-profit applicant, it should be noted that First Congregational Services could be seeking to operate a non-commercial FM station in the commercial portion of the FM band.

Two Rivers, with a population of 13,030 residents, is well-served with news and information from stations licensed to Two Rivers and Manitowoc, including three aural services licensed to Two Rivers presently. The current WGBM transmitter site only puts a "city grade" signal over approximately 87% of the Village of Mishicot. (See Exhibit "E-5") The licensee of WGBM-FM, Bay Lakes Valley Broadcasters, Incorporated does not maintain a Mishicot address, nor a Mishicot telephone number, a relocation of it's "city of license" identification to Denmark, Wisconsin is warranted. At the present, WGBM derives less than 5% of it's advertising base from the Village of Mishicot, yet provides a 100% "city grade" signal over Denmark. The Village of Denmark's need for a first aural service combined with the Village of Mishicot's ability to receive a 100% "city grade" signal with the new allocation proposed, does in fact, warrant a dispositive Section 307(b) preference over the fourth aural service as originally proposed to Two Rivers.

Moreover, the Mishicot-Denmark proposal presents a more efficient use of the broadcast spectrum because it will serve substantially more area and population than the Two Rivers proposal. It will also provide a first aural service to Denmark, WI.

<u>Community:</u>	<u>Existing:</u>	<u>Proposed:</u>	<u>Counter-Proposed</u>
Two Rivers, WI	255A	246A, 255A	255A
Mishicot, WI	234A	234A	246A
Denmark, WI	None	None	234A

The Two Rivers proposal should be dropped, without unduly impeding the fair,

efficient and equitable distribution of radio service. The Counter-Proposal to allocate Denmark, Wisconsin its first aural service serves the Public's interest and needs and further allows the Village of Mishicot to have a licensed facility that can provide 100% "city grade" coverage..

Finally, if First Congregational Services was sincere in its desire to apply for a new FM radio station at Two Rivers, Wisconsin, it had an opportunity during an "application window" which closed on January 30, 1997. That, First Congregational Services submitted their Petition for Rule Making simultaneous with that "application window" and could have merely applied for that assignment.

Therefore, WTRW respectfully requests, in light of the above mentioned prior case law, that the Commission amend its FM table of allotments to allot Channel 255A to Mishicot, Wisconsin at the coordinates of North Latitude 44 - 10 - 24 and West Longitude 87 - 33 - 38, (See Exhibit "A") and that if such window of opportunity exists to apply for same, Petitioner will apply for same. WTRW also respectfully requests the assignment of Channel 234A be granted to the Village of Denmark as its first aural service, and that WGBM's city of license be changed to identify that community.

I hereby certify, that I have read this entire document, and to the best of my knowledge, information and belief, that the foregoing statement is true and correct, that there is good and sufficient reason to support same, and that it is not submitted for delay.

Respectfully submitted,



Mark Heller, President

WTRW Incorporated

1414 16th Street

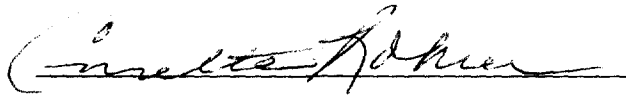
Two Rivers, WI 54241-3031

(414) 794-1800

February 14, 1997.

(seal)

Subscribed and Sworn Before Me this 14 day of February, 1997.



Notary Public. My commission expires

5/18/97.

WTRW Incorporated
1414 16th Street
Two Rivers, WI 54241-3031
FM FREQUENCY ALLOCATION STUDY

Channel: 246A (97.1 MHz)
Coordinates: 44 - 10 - 24 87 - 33 - 38
Job Title: WTRW- TWO RIVERS-MISHICOT, WI

6 KW ERP
100 M HAAT
% indicates 73.215 facility
C1.A Spacing: 73.207

CALL STATUS	% CITY STATE	CH/CL-ZN FCC#	ERP-kw APPLICANT/LICENSEE	HAAT-m	DA	LATITUDE LONGITUDE	BEAR-to -from-T	DIST-km CLEAR-km	REQ -km
USED	Algoma WI	244C3 >				44 38 08 87 37 37	354.2 174.1	51.6 +10.1	41.5 CLEAR
WBDK LIC	Algoma WI	244C3 BLH930106KD	25.0 > Nicolet Broadcasting	86		44 38 52 87 33 54	359.6 179.6	52.7 +11.2	41.5 CLEAR
WUSW LIC	Oshkosh WI	245A BLH911129KB	6.0 > Odon Communications	100		44 06 01 88 32 02	264.4 83.7	78.3 +6.8	71.5 CLEAR
USED	Oshkosh WI	245A 89-282				44 06 36 88 30 18	265.0 84.3	75.9 +4.4	71.5 CLEAR
WGLQ LIC	Escanaba MI	246C BLH820713AB	100.0 > MW Multicom Inc.	326		46 08 04 86 56 52	12.2 192.6	223.2 -2.3*	225.5 SHORT
WLTV LIC	Milwaukee WI	247B BLH840925DP	15.5 > Hearst Corporation	278		43 06 41 87 55 38	194.2 13.9	121.6 +9.1	112.5 CLEAR

>> * CHANNEL SHORT-SPACED; RELOCATION MAY BE POSSIBLE <<

EXHIBIT "A"
FM FREQUENCY ALLOCATION
STUDY - MISHICOT, WI

APPLICANT: Value Radio Corporation
(New FM) Channel 4298A
Mishicot, Wisconsin

EXHIBIT: E-5

Prepared 06/01/91

The facility proposed by this Application does not satisfy the requirements of 47 Code of Federal Regulations, Sections 73.315(a).

A minimum field strength of 70 dB above one $\mu\text{V/m}$ (dBu), or 3.16 mV/m, won't be provided over the entire principal community to be served, the village of Mishicot, Wisconsin.

Exhibit E-8, Part 2, which follows herein, displays the Corporate Boundary of the village of Mishicot, Wisconsin, in relation the 3.16 mV/m predicted service contour of the Applicant's proposed station.

A study conducted determined 87% of the land area of the village of Mishicot, and 96.32% of the village population shall receive the requisite 3.16 mV/m (City Grade) minimum field strength.

In accordance with current Commission policy, more than eighty per-cent (80.0%) of Mishicot, Wisconsin, shall be provided a minimum field strength of 70 dB above one $\mu\text{V/m}$ (dBu), or 3.16 mV/m.

EXHIBIT E-5; CONCLUDED

EXHIBIT "E-5" EXHIBIT FROM 1991 SHOWING THAT CURRENT MISHICOT, WI FM CANNOT PROVIDE 100% CITY GRADE COVERAGE (Waiver of Section 73.315(a) Requested)
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FEDERAL AVIATION ADMINISTRATION
Great Lakes Region, AGL-530
2300 East Devon Avenue
Des Plaines, IL 60018

In Reply Refer To
AERONAUTICAL STUDY NO.
91-AGL-2409-OE

ACKNOWLEDGMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

PROPOSER:
Phil Robbins
Value Radio Corporation
P. O. Box 1490

Oshkosh WI 54903

CONSTRUCTION LOCATION:
Denmark WI

LATITUDE : 44-21-46.
LONGITUDE: 087-45-40.

AGL AMSL
HEIGHT: 393. ft 1151. ft

CONSTRUCTION PROPOSED: Guyed Antenna Tower
FREQUENCY: 94.7 MHz
EFFECTIVE RADIATED POWER (ERP): 6.0 KW

The Federal Aviation Administration acknowledges receipt of notice dated 12/11/91, concerning the proposed construction or alteration described above.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction is not identified as an obstruction under any standard of FAR, Part 77, Subpart C and would not be a hazard to air navigation.

The structure should be obstruction marked and lighted per FAA Advisory Circular AC 70/7460-1, "Obstruction Marking and Lighting", Chapters 3, 4, 5, & 13.

Supplemental notice is required at least 48 hours before the start of construction and within 5 days after construction reaches its greatest height (Use enclosed FAA Form 7460-2).

This determination expires on 09/15/92 unless:

- (a) extended, revised or terminated by the issuing office;
- (b) the construction is subject to the licensing authority of the Federal Communications Commission and an application for a construction permit is made to the FCC on or before the above expiration date. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or on the date the FCC denies the application.

NOTE: Any request for extension of the effective period of this determination must be postmarked or delivered to the issuing office at least 15 days prior to the expiration date.

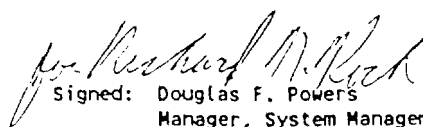
If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

>>>> NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED <<<<

Remarks:

Study included sponsor's letter of February 11, 1992 correcting the frequency from 107.5 MHz. to 94.7 MHz.

EXHIBIT FROM F.A.A.
IDENTIFYING EXISTING
MISHICOT, WI FM IS
LOCATED AT DENMARK, WI


Signed: Douglas F. Powers
Manager, System Management Branch

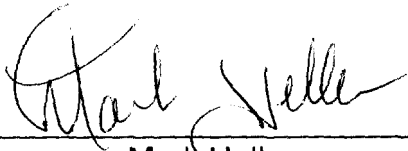
Issued In: Des Plaines, Illinois
On: 03/05/92

CERTIFICATE OF SERVICE

I, Mark Heller, President of WTRW Incorporated, do hereby certify that I have caused to be served, this 14th day of February, 1997, by First-Class mail, postage prepaid, a copy of the foregoing "COMMENTS AND COUNTER-PROPOSAL TO ASSIGN A NEW F M STATION AT TWO RIVERS, WISCONSIN" to the following:

Henry E. Crawford
1150 Connecticut Avenue, N.W.
Suite # 900
Washington, DC 20036 (Counsel for First Congregational Services)

Mr. Phil Robbins
Bay Lakes Valley Broadcasters, Incorporated
c/o Radio Station WGBM-FM
2733 Manitowoc Road
Green Bay, WI 54311 (Licensee of WGBM-FM, Mishicot, WI)



Mark Heller